

General terms and conditions for repairs to machinery and equipment

I. Conclusion of contract, information obligations, safety instructions

1. All repairs carried out by KOLLER Maschinen- und Anlagenbau GmbH, hereinafter referred to as the Contractor, are based on these terms and conditions as well as any supplementary contractual agreements. Deviating terms and conditions of the Customer are hereby expressly rejected. They shall not become part of the contract even by acceptance of the order. Insofar as no deviating agreements have been made, a contract is concluded with the written order confirmation of the Contractor.
2. If the object to be repaired has not been delivered by the Contractor, the Customer shall point out any existing industrial property rights with regard to the object; provided that the Contractor is not at fault, the Customer shall indemnify the Contractor against any claims of third parties arising from industrial property rights.
3. The Customer shall inform the Contractor in writing in good time prior to the commencement of the repair work about any contamination, possible residues in the items to be repaired that are hazardous to health, as well as transport risks and other measures to be taken relevant for the repair.

II. Non-realizable repair

1. The services rendered for the purpose of submitting a cost estimate as well as the further expenses incurred and to be substantiated (troubleshooting time equivalent to working time) shall be invoiced to the Customer if the repair cannot be carried out for reasons for which the Contractor is not responsible, in particular because
 - the defect complained of did not occur during the inspection,
 - spare parts cannot be obtained,
 - the Customer has missed the agreed deadline and is at fault for such,
 - the contract has been terminated during its performance,
 - the repair is not economical.
2. The item to be repaired need only be returned to its original condition where the Customer expressly requests such and only against reimbursement of the costs, unless the work carried out was not necessary.
3. In the event that the repair is non-realizable, the Contractor shall not be liable for damage to the object to be repaired, the breach of ancillary contractual obligations and for damage that did not occur to the object to be repaired itself, irrespective of the legal grounds on which the Customer relies.

The liability provisions of Section XI.3 of these Terms and Conditions shall apply accordingly.

III. Cost information, cost estimate

1. As far as possible, the Customer will be given the estimated repair price when the contract is concluded, otherwise the Customer can set cost limits.
If the repair cannot be carried out at these costs or if the Contractor deems it necessary to carry out additional work during the repair, the Customer's consent shall be obtained if the stated costs are exceeded by more than 15%.
2. If a cost estimate with binding price estimates is desired before the repair is carried out, this must be expressly requested by the Customer. Unless otherwise agreed, such a cost estimate shall only be binding if it is submitted in writing. It shall be remunerated. The services rendered for the submission of the cost estimate shall not be charged to the Customer insofar as they can be utilized in the execution of the repair.

IV. Price and payment

1. The Contractor is entitled to demand a reasonable advance payment upon conclusion of the contract.
2. When calculating the repair, the prices for parts used, materials and special services as well as the prices for labor, travel and transport costs shall each be listed separately. If the repair is carried out on the basis of a binding cost estimate, a reference to the cost estimate shall suffice, whereby only deviations in the scope of services shall be listed separately.
3. Value added tax shall be charged additionally to the Customer at the corresponding statutory rate.
4. Any correction of the invoice on the part of the Contractor and any complaint on the part of the Customer must be made in writing no later than four weeks after receipt of the invoice.
5. Payment shall be made without discount upon acceptance and delivery or sending of the invoice.
6. The withholding of payments due to any counterclaims of the Customer disputed by the Contractor is not permitted.
7. Set-offs on the basis of any counterclaims of the Customer from other legal relationships disputed by the Contractor are not permitted.

V. Cooperation and technical assistance of the Customer in case of repair outside the Contractor's facilities

1. The Customer shall support the repair personnel in carrying out the repair at his own expense.
2. The Customer shall take the special measures necessary for the protection of persons and property at the repair site. He shall also inform the repair manager about existing special safety regulations, insofar as these are of importance for the repair personnel. He shall notify the Contractor of any violations of such safety regulations by the repair personnel. In the event of serious violations, he may, in consultation with the repair manager, deny the violator access to the repair site.
3. The Customer is obliged to provide technical assistance at his own expense, in particular to:
 - a. provide the necessary suitable auxiliary personnel in the number and for the time required for the repair; the auxiliary personnel shall follow the instructions of the repair manager. The Contractor shall not assume any liability for the auxiliary personnel. If a defect or any damage has been caused by the auxiliary personnel due to instructions of the repair manager, the provisions of Sections X and XI of these Terms and Conditions shall apply accordingly.
 - b. carry out all construction, bedding and scaffolding work, including procurement of the necessary construction materials.
 - c. provide the necessary equipment and heavy tools, as well as the necessary supplies and materials.
 - d. provide heating, lighting, operating power, water, including the necessary connections.
 - e. provide the necessary dry and lockable space for storage of repair personnel's tools.
 - f. protect the repair site and materials from harmful influences of any kind, and to clean the repair site.
 - g. provide suitable, theft-proof common rooms and workrooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for repair personnel.
 - h. provide materials and perform all other acts necessary for the adjustment of the object of repair and for the performance of a test as provided for in the contract.
4. The Customer's technical assistance must ensure that the repair can be started immediately after the arrival of the repair personnel and carried out without delay up until acceptance by the Customer. If special plans or instructions of the Contractor are required, the Contractor shall make them available to the Customer in due time.
5. If the Customer does not comply with its obligations, the Contractor shall be entitled, but not obliged, after setting a deadline, to perform the actions incumbent on the Customer on the Customer's behalf and expense. Furthermore, the Contractor's statutory rights and claims shall remain unaffected.

VI. Transport and insurance in case of repair at the Contractor's facilities

1. Unless otherwise agreed in writing, any transport of the object of repair to and from the Contractor at the Customer's request - including any packaging and loading - shall be carried out at the Customer's expense, otherwise the object of repair shall be delivered to the Contractor by the Customer at the Customer's expense and collected by the Customer after the repair has been carried out at the Contractor's premises.
2. The Customer bears the risk of transport.
3. At the Customer's request, the outward and, if applicable, the return transport shall be insured against insurable transport risks, e.g. theft, breakage, fire, at the Customer's expense.
4. There shall be no insurance coverage during the repair time at the Contractor's works. Customer shall ensure that the existing insurance coverage for the object of repair is maintained, e.g. with regard to fire, tap water, storm and machine breakage insurance. Insurance coverage for these risks can only be procured at the express request and expense of Customer.
5. In case of Customer's delay in accepting delivery, Contractor may charge storage fees for storage in its works. The repair item may also be stored elsewhere at the Contractor's discretion. The costs and risk of storage shall be borne by Customer.

VII. Repair period, repair delay

1. The information on repair times is based on estimates and is therefore not binding.
2. The Customer may only demand the agreement of a binding repair period, which must be designated as binding, when the scope of the work has been precisely determined.
3. The binding repair period shall be deemed to have been complied with if the object to be repaired is ready for takeover by the Customer by the time of its expiry or, in the event of a contractually stipulated trial run, for the performance thereof.
4. In the case of additional and supplemental orders placed later or in the case of necessary additional repair work, the agreed repair period shall be extended accordingly.
5. If the repair is delayed due to measures within the scope of labor disputes, in particular strikes and lockouts, as well as the occurrence of circumstances for which the Contractor is not responsible (e.g. the non-availability of required material), an appropriate extension of the repair period shall occur insofar as such obstacles can be proven to have a significant influence on the completion of the repair.
6. If the Customer suffers damage as a result of the Contractor's delay, the Customer shall be entitled to demand a lump-sum compensation for the delay. It shall amount to 0.5% for each full week of delay, but in total not more than 5% of the repair price for that part of the item to be repaired by the Contractor which cannot be used in time due to the delay.

If the Customer sets the Contractor - taking into account the statutory exceptions - a reasonable deadline for performance after the due date and if the deadline is not met, the Customer shall be entitled to withdraw from the contract within the scope of the statutory provisions. He undertakes to declare within a reasonable period of time upon the Contractor's request whether he will make use of his right of withdrawal.

Further claims due to default shall be determined exclusively in accordance with Section XI. 3 of these Terms and Conditions.

VIII. Acceptance

1. The Customer shall accept the repair work as soon as he has been notified of its completion and any contractually stipulated testing of the object of repair has taken place. If the repair proves not to be in accordance with the contract, the Contractor shall be obliged to remedy the defect. This shall not apply if the defect is insignificant for the interests of Customer or is due to a circumstance attributable to Customer. If the defect is not material, the Customer may not refuse acceptance.
2. If acceptance is delayed through no fault of the Contractor, acceptance shall be deemed to have taken place after two weeks have elapsed since notification of completion of the repair.
3. Upon acceptance, the Contractor's liability for recognizable defects shall cease, unless the Customer has reserved the right to assert a specific defect.

IX. Retention of title, extended lien

1. The Contractor retains ownership of all accessories, spare parts and replacement units used until receipt of all outstanding payments from the business relationship with the Customer. If spare parts or the like integrated on the occasion of work performances or repairs are combined with another object so that they become an essential part of another object, the Customer shall transfer to the Contractor its claims or its co-ownership right to the new object in the amount of the Contractor's claim if claims or co-ownership arise as a result. The Contractor undertakes to release the security to which it is entitled to the extent that its value exceeds the claims to be secured by more than 10%.
2. The Contractor shall be entitled to a lien on the Customer's object of repair which has come into its possession on the basis of the contract on account of its claim arising from the repair contract. The right of lien may also be asserted on account of claims from work carried out earlier, spare parts deliveries and other services, insofar as they are connected with the object to be repaired. The right of lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or have become the subject of a final and binding legal decision.

X. Claims for defects

1. After acceptance of the repair, the Contractor shall be liable for defects of the repair to the exclusion of all other claims of the Customer without prejudice to No. 5 and 6 and Section XI of these Terms and Conditions in such a way that the Contractor shall remedy the defects. Customer shall immediately notify Contractor in writing of any defect discovered.
2. The Contractor shall not be liable if the defect is insignificant for the interests of the Customer or is due to a circumstance attributable to the Customer. This applies in particular with regard to parts provided by the Customer.
3. In the event of any improper modifications or repair work carried out by the Customer or third parties without the prior consent of the Contractor, the Contractor's liability for the consequences arising therefrom is null and void. Only in urgent cases of danger to operational safety and to prevent disproportionate damage, in which case the Contractor must be notified immediately, or if the Contractor - taking into account the statutory exceptions - has allowed a reasonable period set for it to remedy the defect to expire fruitlessly, shall the Customer have the right, within the framework of the statutory provisions, to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary costs from the Contractor.
4. In the event of a justified complaint, the Contractor shall bear the costs necessary to remedy the defect, provided this does not result in a disproportionate burden on the Contractor.

5. If the Contractor - taking into account the statutory exceptions - allows a reasonable period of time set for him to remedy the defect to expire fruitlessly, the Customer shall have a right of reduction within the framework of the statutory provisions. Only if the repair is demonstrably without interest for the Customer despite the reduction is the Customer entitled to withdraw from the contract.
6. Further claims shall be determined exclusively in accordance with Section XI.3 of these Terms and Conditions.

XI. Liability of the Contractor, Disclaimer

1. If parts of the object to be repaired are damaged through the fault of the Contractor, the Contractor shall, at its option and at its expense, repair them, deliver new parts or provide replacements. The costs to be incurred for this shall be limited to the contractual repair price in the event of slight negligence. In addition, liability for damage to the object to be repaired shall be in accordance with Section XI.3 of these Terms and Conditions.
2. If the repair item cannot be used by Customer in accordance with the contract as a result of culpably omitted or faulty suggestions or advice provided by Contractor before or after conclusion of the contract, or as a result of culpable breach of other contractual ancillary obligations - in particular instructions for operation and maintenance of the repair item - the provisions of Sections X and XI. 1 and 3 of these Terms and Conditions shall apply to the exclusion of any further claims by Customer.
3. For damage that has not occurred to the object of repair itself, the Contractor shall be liable - for whatever legal reasons - only
 - a. in the event of intent and gross negligence,
 - b. in case of culpable injury to life, body, health,
 - c. in the case of defects which he has fraudulently concealed,
 - d. within the scope of a guarantee commitment,
 - e. insofar as liability exists under product liability law for personal injury or property damage to privately used objects.

In the event of culpable breach of material contractual obligations, the Contractor shall also be liable in the event of simple negligence, but limited to the reasonably foreseeable damage typical for the contract.

Further claims are excluded.

XII. Limitation period

All claims of the Customer - for whatever legal reasons - shall become statute-barred after 12 months. The statutory periods shall apply to claims for damages under Section XI. 3 a-c and e of these Terms and Conditions. If the Contractor performs the repair work on a building and thereby causes its defectiveness, the statutory periods shall also apply.

XIII. Substitute performance of the Customer

If, during repair work outside the Contractor's facilities, the devices or tools provided by the Contractor are damaged at the repair site through no fault of the Contractor or if they are lost through no fault of the Contractor, the Customer shall provide compensation for such damage. Damage attributable to normal wear and tear shall not be taken into account.

XIV. Applicable law, place of jurisdiction

1. All legal relations between the Contractor and the Customer shall be governed exclusively by the law of the Federal Republic of Germany as applicable to the legal relations between domestic parties thereof.
2. The place of jurisdiction shall be the court responsible for the Contractor's registered office. However, the Contractor shall be entitled to bring an action at the Customer's principal place of business.

XV. Severability clause

If a provision of these terms and conditions is not legally effective or its implementation is omitted, this shall not affect the effectiveness of the other provisions. In this case, the parties shall agree on a provision that comes closest to the meaning and purpose of these provisions or shall allow the statutory provision to apply that corresponds to the economic interests of the parties.

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